

Congress of the United States
Washington, DC 20515

January 14, 2022

Mr. Jeffrey Zients
White House Coordinator of the COVID-19 Response
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20050

Dear Mr. Zients,

We write to request that the Administration take additional steps to reduce the cost and improve the accessibility of diagnostic COVID-19 testing. With COVID-19 setting records at more than 650,000 daily cases as of last week, exposures to the virus will continue to require more Americans to seek testing.¹ We strongly support the Administration's recent steps to increase diagnostic testing, including launching additional federally run testing sites and purchasing one billion rapid tests for distribution to Americans.² However, we are concerned that unexpected costs and barriers are causing patients to pay for testing that should be free—or to forego testing altogether. We urge the Administration to use all the tools at its disposal, including its emergency powers, to guarantee that diagnostic testing is provided at no cost to patients.

Widespread testing is one of the most important tools for transitioning the public health emergency pandemic to an endemic phase. As demand for testing makes appointments scarce and forces some patients to pursue fee-based testing that costs hundreds of dollars,³ officials are warning of price gouging for at-home tests.⁴ To help patients overcome financial barriers to testing, Congress included provisions in the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Except in limited circumstances, these laws require group and individual insurance plans to cover diagnostic testing without passing costs on to patients.⁵ We applaud the Administration's guidance clarifying that insurers may not use screening criteria to only cover tests deemed "medically necessary."⁶ We remain concerned, however, by the number of Americans who report receiving unexpected bills for diagnostic testing that they believed would be free.

¹ https://covid.cdc.gov/covid-data-tracker/#trends_dailycases

² <https://www.whitehouse.gov/briefing-room/press-briefings/2021/12/29/press-briefing-by-white-house-covid-19-response-team-and-public-health-officials-76/>; <https://www.nytimes.com/2022/01/13/us/politics/covid-tests-biden.html>

³ <https://www.wsj.com/articles/some-families-shell-out-for-covid-19-tests-as-officials-race-to-offer-more-11641499169>

⁴ <https://oag.ca.gov/news/press-releases/attorney-general-bonta-issues-consumer-alert-following-governors-executive-order>

⁵ FFCRA, Section 6001; CARES Act, Section 3201.

⁶ <https://www.cms.gov/newsroom/press-releases/biden-administration-strengthens-requirements-plans-and-issuers-cover-covid-19-diagnostic-testing>

Despite the Administration's guidance, it appears that some providers have billed patients for tests not deemed "medically necessary."⁷ Other reports highlight that patients have received bills for screening services associated with, but unrelated to, their COVID-19 testing.⁸ These fees stem from services like doctor consultations or screenings that providers proactively offered patients; the patients did not request these tests. Moreover, the services were provided without any communication to patients that these services would not be covered.⁹ In addition, some test providers are allegedly misrepresenting the reasons patients seek testing to fraudulently bill both patients and insurers for the same test.¹⁰

Patients seeking testing from out-of-network providers may face surprise bills for tests they expected their insurance to cover. Under current guidelines, out-of-network providers can request that patients pay the cost of tests upfront,¹¹ leaving patients with bills totaling hundreds of dollars for diagnostic testing that is supposed to be free.¹² While patients can normally submit these bills for reimbursement through their insurers, the process can be time consuming, unpredictable, and require resources (like internet access or a printer) that some patients may not have.

Enduring problems with cost-sharing for clinically administered COVID-19 tests underscore the need for cost-free, federally run testing. We support the Administration's recently announced actions to get rapid tests to more Americans, including by finalizing plans with the USPS to deliver test kits to households across the country through an online platform.¹³ As your Administration implements plans for this effort, we urge you to consider that the online distribution of antigen testing will exclude Americans who lack consistent access to the internet, especially as many of the public spaces that traditionally provide that access – such as libraries and community and senior centers – are closed or operating at a reduced capacity. Communities that lack internet access are often among the most likely to be infected, including older Americans, people with low incomes, and communities of color.¹⁴ We are concerned that without easily accessible, free alternatives to online distribution, vulnerable communities will be largely excluded from this program.

We are grateful that your Administration's guidance on reimbursement for at-home antigen tests includes an option for insurers to cover the full cost of antigen tests at the point of sale.¹⁵ This program will secure free testing for millions of patients. But this system relies on voluntary participation by insurers to create a network of participating pharmacies,¹⁶ which is not normally done for retail purchases.¹⁷ We are concerned that many patients may struggle to afford the

⁷ <https://www.cms.gov/newsroom/press-releases/biden-administration-strengthens-requirements-plans-and-issuers-cover-covid-19-diagnostic-testing>

⁸ <https://www.cbsnews.com/news/covid-test-4000-bills-texas-man/>

⁹ Id.; FFCRA, Section 6202(a)(2).

¹⁰ <https://nymag.com/intelligencer/2022/01/carecube-covid-testing-scam-accusations.html>

¹¹ <https://www.healthsystemtracker.org/brief/covid-19-test-prices-and-payment-policy/>

¹² https://tucson.com/news/local/federal-law-says-coronavirus-testing-should-be-covered-but-patients-are-still-being-asked-to/article_ca0c2693-41d6-5bf6-aeb6-28775eae927b.html

¹³ <https://www.washingtonpost.com/nation/2022/01/06/biden-covid-tests-usps/>

¹⁴ <https://www.govtech.com/health/the-digital-divide-is-deepening-vaccine-frustrations.html>

¹⁵ <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/aca-part-51.pdf>

¹⁶ <https://www.cms.gov/how-to-get-your-at-home-OTC-COVID-19-test-for-free>

¹⁷ <https://www.nytimes.com/2022/01/14/upshot/free-rapid-covid-tests.html>

upfront costs of at-home tests if they pursue a test at an out-of-network pharmacy, particularly as the costs of tests increase. For months, the Administration's agreements with retailers successfully reduced the costs of rapid tests, making them affordable for Americans.¹⁸ But now that these agreements have expired, retailers are raising prices.¹⁹ We have serious concerns that increasing prices at the point of sale will discourage testing for those who cannot afford the upfront costs—particularly for patients who lack insurance or who cannot easily access information on in-network pharmacies that accept their plans.

Given recent challenges in providing free COVID-19 testing, we urge the Administration to follow through on its ability to provide no-cost testing to all, including the uninsured, using its emergency authority. Congress authorized funding to cover costs associated with testing uninsured patients in four recent laws.²⁰ However, because providers can elect not to seek reimbursement from this program, uninsured patients receiving lab testing may still encounter unexpected bills.²¹ We request that the Administration build upon these efforts to protect uninsured patients from bills associated with COVID-19 testing.

To remain updated on the Administration's efforts to provide no-cost testing, we request a briefing on these issues by January 28, 2022. Additionally, we ask that the Administration develop policies to:

- Monitor compliance with its guidance that medical management not be used in evaluating whether tests are “medically necessary;”
- Work with providers to streamline insurance reimbursement for both PCR and antigen tests, and to require that claims for reimbursement are not denied due to delayed claim submissions;
- Pursue criminal penalties against testing providers that engage in fraudulent billing practices;
- Develop a toll-free hotline as a supplement to the online at-home antigen test distribution website;
- Require insurers to cover the costs of antigen tests at no cost-sharing to patients;
- Continue to expand federally run testing facilities; and
- Use federal emergency powers to provide no-cost testing to anyone who seeks a diagnostic test for personal purposes.

Thanks to the partnership between Congress and your Administration, the federal government has successfully delivered free COVID-19 testing to millions of Americans. The framework for testing coverage is strong. But as more and more Americans seek tests, even small fractures in the policy structure are magnified. Without bold action, these costs could present barriers that prevent Americans from seeking the testing they need to keep their communities safe.

¹⁸ <https://www.whitehouse.gov/covidplan/#testing-masking>

¹⁹ <https://www.businessinsider.com/walmart-kroger-raise-prices-for-take-home-coronavirus-tests-2022-1>;
<https://www.nbcnews.com/business/business-news/walmart-kroger-raise-home-covid-test-price-white-house-agreement-expir-rcna10967>

²⁰ Funding for the HRSA COVID-19 Uninsured Program comes from the FFCRA, the Paycheck Protection Program and Healthcare Enhancement Act, the CARES Act's Provider Relief Fund (PRF), and the American Rescue Plan. <https://www.hrsa.gov/coviduninsuredclaim/frequently-asked-questions>

²¹ <https://crsreports.congress.gov/product/pdf/IN/IN11526>

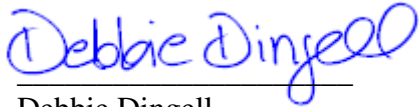
Sincerely,



Katie Porter
Member of Congress



Rashida Tlaib
Member of Congress



Debbie Dingell
Member of Congress



Sean Casten
Member of Congress